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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,346	02/13/2002	Kelly G. Ammann	2599-104-C2	8235
6449	7590	02/23/2006	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			CROSS, LATOYA I	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,346

Applicant(s)

AMMANN ET AL.

Examiner

LaToya C. Younger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicants' remarks filed on December 2, 2005. Claims 1-30 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 4-9, 20 and 21 rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,503,751 to Hugh.

Hugh discloses an incubator comprising a housing generally including an insulated housing (12) with an interior controlled atmosphere chamber (14). Chamber (14) is accessed via an outer insulated and inner heated pair of doors (16, 18). The doors are attached to the housing by way of a pair of hinges (20, 22). The door pivots from a closed to open position (and vice versa) via the hinges. At col. 11, lines 52 – col. 12, line 5, Hugh discloses a door position detection circuit to determine the position of the door. Inside the housing 12 are mounted shelves. The shelves can be considered to be receptacle carriers and the spaces between the shelves (where objects to be incubated are placed) can be considered equivalent to Applicants' claimed receptacle stations. The incubator is heated via electric heating elements (79). A microprocessor (300) controls the heater, fan and gas flow into the incubator. The fan comprises a fan motor which circulates air within the incubator (col. 12, lines 51-58). Hugh further teaches that the incubator comprises a temperature sensor (314).

Hugh differs from the instant invention in that there is no teaching of the pair of doors (16, 18) being "command responsive". Hugh does teach the doors are constructed to be moved between an open

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and closed position. With respect to that movement being "command responsive", the position the Examiner takes is that such "command responsive" movement would have been obvious to one of ordinary skill in the art to allow the doors to open and shut in an automated manner, without the need for the user to perform this action. Such modification would provide the advantage of allowing the incubator to operate without user intervention and more importantly, to allow the incubator's door to close and shut at the most opportune time, which would allow the apparatus to operate more efficiently.

2. Claims 1, 8-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,156,565 to Maes et al.

Maes et al disclose an incubation station for test cards. The incubation station (600) comprises several cover panels (619) which form an enclosure for the carousel (604) and isolate the carousel from the ambient environment. The carousel (604) is vertically mounted and rotates about a horizontal axis. The carousel has a plurality of slots (614) for receiving test receptacles. The incubation station further comprises a heater and fan assembly. A first fan (637) is positioned below and behind air duct (622) which blows ambient air over heater assembly (638) which warms the air. A second fan (639) directs warmed air into the air table. Heat sensors (thermistors) are provided for controlling the operation of the heater and the temperature exiting the air table.

Maes et al differ from the instant invention in that there is no teaching of the pair of doors (16, 18) being "command responsive". Maes et al do teach the doors are constructed to be moved between an open and closed position. With respect to that movement being "command responsive", the position the Examiner takes is that such "command responsive" movement would have been obvious to one of ordinary skill in the art to allow the doors to open and shut in an automated manner, without the need for the user to perform this action. Such modification would provide the advantage of allowing the

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incubator to operated without user intervention and more importantly, to allow the incubator's door to close and shut at the most opportune time, which would allow the apparatus to operate more efficiently

3. Claims 2, 3 and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hugh or Maes et al, as applied above, in view of US patent 5,882,594 to Kawaguchi et al.

The disclosures of both Hugh and Maes et al are described above. Both references differ from the instant invention in that there is no disclosure of a mixing means in the incubator.

Kawaguchi et al teach an incubator for the pretreatment of samples. The incubator is equipped with an agitation means for agitating diluted sample, promoting the pretreatment reaction stably, and promoting the main reaction. Kawaguchi et al teach agitation means in the form of vibration agitation, stirring means where the sample liquid is directly stirred or magnetic agitation.

It would have been obvious to one of ordinary skill in the art to incorporate a mixing means into the incubators of either Hugh or Maes et al. Such mixing means would allow a sample to be mixed so as to facilitate treatment of the sample or to facilitate reaction of the sample with added reagents.

Response to Arguments

4. Applicant's arguments filed December 2, 2005 have been fully considered but they are not persuasive. With respect to the rejections over Hugh and Maes et al, Applicants argue that neither reference teaches "command responsive" doors (closures). In response the Examiner notes that making of a manual process to work automatically is an obvious modification to the ordinarily-skilled artisan. MPEP 2144.04(III) states that an automatic or mechanical means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art. Both Hugh and Maes et al teach closures for incubators that are constructed to move between an open and closed position. In both

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references, the movement is presumably manual. Applicants' invention of making such movement to be automatic is obvious as one of ordinary skill in the art would clearly recognize the advantages of having the doors open and shut automatically.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya C. Younger whose telephone number is 571-272-1256. The examiner can normally be reached on Monday-Thursday 10:30 a.m. - 8:00 p.m. and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MONIQUE T. COLE
PRIMARY EXAMINER